

APPEAL NO. 010807

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 20, 2001. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on _____, and has had disability from May 20, 2000, through the date of the CCH. The appellant (carrier) appealed and the claimant responded.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____, and that the claimant has had disability resulting from the _____, compensable injury from May 20, 2000, through the date of the CCH. The hearing officer properly placed the burden of proof on the claimant to prove that he was injured in the course and scope of his employment and that he had disability as defined by Section 401.011(16). The claimant testified that he was performing his job duties on _____, when he injured his back lifting a bag of mortar mix and that he has been unable to work because of that injury. There is conflicting evidence in this case. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The claimant's testimony and the reports of the claimant's treating doctor support the hearing officer's decision. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier has not shown that the hearing officer's ruling excluding the testimony of a witness was reversible error. To obtain reversal of a decision based upon an error in the admission or exclusion of evidence, it must be shown that the evidentiary ruling was in error and that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In making the ruling, the hearing officer was presented with conflicting statements from the parties with regard to whether the last name of the witness was timely exchanged. In any event, if the ruling was in error, it has not been shown to constitute reversible error. The written statement of the witness, which supported the carrier's allegation that the claimant did not sustain a work-related injury, was in evidence.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge